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December 14, 2005

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1217

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Board of Governors of the Federal Reserve System's (Board) second advance notice of proposed rulemaking (ANPR) and request for comments regarding amendments to Regulation Z, 12 CFR part 266. In particular, the Board has requested comments on issues related to the Truth in Lending Act (TILA) provisions in the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act).

Before addressing the specifics of the Board's request for comments, NAFCU would like to take the opportunity to provide some general comments on the effectiveness of the open-end credit disclosures in Regulation Z. The Board noted in its second ANPR that one of the factors to be considered in its Regulation Z review is how the contents of the disclosures might be simplified to prevent "information overload." NAFCU has heard concerns from member credit unions that, with the number of consumer protection disclosures becoming increasingly copious, consumers are becoming overwhelmed. Consequently, there is a concern that consumers are not reading the disclosures that are provided to them. The benefits of the disclosures are negated if the information is not being utilized by consumers.

Additionally, NAFCU would like to express concern about the significant compliance challenges imposed by the new TILA amendments. The requirements create substantial regulatory and financial burdens for credit unions, particularly smaller institutions. Indeed, establishing toll-free numbers and modifying disclosures will prove costly for financial institutions. Although the Board will establish and maintain the number for the first 24 months after the final rule is promulgated (and for credit unions with assets not exceeding $250,000,000), institutions will nonetheless be responsible for providing the Board with consumer information. Ultimately then, despite this concession, the expenditure of considerable resources will still be necessary. NAFCU believes that in implementing the amendments to TILA made by the Bankruptcy Act, the Board should be cognizant of the significant compliance burden involved.

Minimum Payment Disclosures

The Bankruptcy Act amends TILA to require creditors to provide specific disclosures on periodic statements about the consequences of making only minimum payments. However, the Board has broad authority to provide exceptions from TILA requirements; as such, the Board has requested comment on whether there are certain types of credit transactions and/or accounts for which the new minimum payment disclosures are not appropriate (Q 59-61).

NAFCU believes that there are certain classes of transactions that should be completely exempt from the minimum payment disclosure requirements. For example, open-end credit plans that are structured like closed-end loans should be exempted. Because these types of plans tend to have fixed repayment periods and are paid in scheduled installments that are not necessarily based on a percentage of the outstanding balance, the minimum payment disclosures are not appropriate. Similarly, home equity lines of credit (HELOCs) with defined draw and repayment periods should be completely exempted from the disclosure requirements. Where the length of time to repay the outstanding balance is fixed and expressed in a credit agreement, the minimum payment warnings would not be meaningful since the consumer already knows how long it will take to pay off the account by making only scheduled monthly payments.

Alternatively, if the Board declines to provide a complete exemption, NAFCU recommends that credit plans with fixed repayment periods be exempted from disclosing the hypothetical example and toll-free number on periodic statements. For these types of accounts, a brief standardized warning would be more than sufficient.

Hypothetical Examples for Periodic Statements

The Board has also asked for comment on the hypothetical example disclosures (Q 62-64). NAFCU believes that the term "typical" used in the hypothetical example for the periodic statement disclosure is unnecessary and that the term should be excluded from the warning statement. The term "typical" implies that the stated percentage is an industry norm. In fact, what is typical cannot be adequately defined since the minimum payment required varies from one creditor to another. Using the language "For example" is sufficient to inform consumers that the hypothetical example is merely an illustration and does not represent their account terms; adding the term "typical" only confuses the message. NAFCU recommends that the term "typical" be deleted from the hypothetical example. Instead, the term "for example," should be used exclusively.

Estimated Repayment Period

The Board plans to develop formulas that can be used to generate the repayment tables required by the amended TILA; such formulas require certain assumptions to be made which can affect the calculation of the estimated repayment period (Q 65). NAFCU believes that the balance calculation method, grace period, and residual interest assumptions as explained in the ANPR are appropriate. However, creditors should have the option of factoring their own minimum payment requirement into the formula used to calculate the repayment period. Institutions choosing this option may then provide a more accurate estimate to the consumer.

A number of NAFCU member credit unions have expressed concern that a disclosure of underlying assumptions used to calculate the repayment period would be unduly confusing to the consumer. Thus, while such disclosure may be beneficial to consumers by providing a suitable context in which to understand the estimate, NAFCU believes that these disclosures may be too onerous and should therefore be left to the discretion of the financial institution.

Option to Provide the Actual Number of Months

NAFCU believes that the Board should adopt a tolerance for error to create a safe harbor before any enforcement actions are taken against a creditor who discloses the incorrect number of months to repay outstanding balances (Q 78). For example, a one- to three- month tolerance would provide a financial institution some small room for error, but would still provide a consumer with meaningful information.

Clear and Conspicuous Standard

NAFCU also supports providing creditors with model disclosures to create a safe harbor for satisfying the "clear and conspicuous" standard (Q 83-84). Providing financial institutions with model forms not only assists in compliance but allows consumers to compare loan products more effectively.

While some NAFCU member credit unions, however, have indicated that format guidelines would be helpful, others have expressed concern that such requirements would be too onerous given space constraints. NAFCU believes that the Board should provide format guidelines that leave creditors with enough flexibility to adjust or modify the disclosures in circumstances where space limitations pose a problem.

Introductory Rate Disclosures

Under the new TILA amendments, creditors will be required to use the term "introductory" in immediate proximity to each mention of the introductory APR (Q 86 – 92). NAFCU believes that requiring the term "introductory" to immediately precede or follow the APR would be sufficient to meet the "immediate proximity" standard.

Internet Based Credit Card Solicitations

NAFCU supports the consistent application of the open-end disclosure requirements. The new disclosure requirements should not be made more complex by treating Internet solicitations differently than applications. Thus, the requirements should be the same for both online solicitations and online applications.

Disclosures Related to Payment Deadlines and Late Payment Penalties

Finally, the Board has asked whether there are any circumstances where the "date on which the payment is due" might be different from the "earliest date on which a late payment fee may be charged." (Q 97). NAFCU would like to note that many credit unions have 10- or 15- day grace periods before late fees are assessed. If a grace period is allowed, the due date will differ from the earliest date that a late fee will be charged. Thus, in some circumstances, it will be necessary to disclose the "earliest date that a late fee will be charged" as opposed to the payment due date.

NAFCU would like to thank you for this opportunity to share its views on this proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,

Fred R. Becker, Jr.
President/CEO

FRB/pwy